

## Message Text

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16

ACTION EB-07

INFO OCT-01 EUR-12 EA-07 ISO-00 IO-10 CAB-02 CIAE-00

COME-00 DODE-00 DOTE-00 INR-07 NSAE-00 FAA-00 L-03

PA-01 PRS-01 USIA-06 H-02 SS-15 NSC-05 /079 W

----- 069580

R 030616Z SEP 75

FM AMEMBASSY TOKYO

TO SECSTATE WASHDC 2973

INFO AMCONSUL MONTREAL

AMEMBASSY LONDON

AMEMBASSY PARIS

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MONTREAL FOR U.S. REP ICAO

E.O. 11652: N/A

TAGS: EAIR JA

SUBJ: CIVAIR: NOISE LEVY

REF: TOKYO 12054

1. EMBASSY NOW HAS COMPLETED TRANSLATION OF FONOFF NOTE VERBALE OF AUGUST 25 RE SUBJECT NOISE LEVY. NOTE VERBALE READS AS FOLLOWS:

2. QUOTE. THE MINISTRY OF FOREIGN AFFAIRS HAS THE HONOR TO CONVEY ITS RESPECTS TO THE EMBASSY OF THE UNITED STATES OF AMERICA IN JAPAN, AND IN REFERENCE TO THE SAID EMBASSY'S NOTE VERBALE NO. 489, DATED JULY 25, 1975, REQUESTING THE RE-STUDY OF THE REGULATIONS CONCERNING THE AIRPORT SPECIAL LANDING FEES SYSTEM, WHICH THE JAPANESE GOVERNMENT IS SLATED TO IMPLEMENT IN THE NEAR FUTURE, OR THE POSTPONEMENT OF THE ENFORCEMENT OF THE SAID REGULATIONS, HAS THE HONOR TO NOTIFY THE VIEWS OF THE JAPANESE GOVERNMENT, AS SET FORTH BELOW.

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3. THE SPECIAL LANDING FEES ARE FEES ESTABLISHED ON THE

BASIS OF THE AVIATION DELIBERATION COUNCIL'S RECOMMENDATIONS, FOR THE PURPOSE OF BEING USED TO COVER A PART OF THE EXPENSES NEEDED FOR THE ATTAINMENT OF THE "STANDARDS PERTAINING TO AIRCRAFT NOISE (ENVIRONMENT AGENCY NOTIFICATION NO. 154, DATED DECEMBER 27, 1973)," AMONG THE ENVIRONMENTAL CONDITIONS PERTAINING TO NOISES, BASED ON THE PROVISIONS OF ARTICLE 9 OF THE PUBLIC NUISANCES COUNTERMEASURES BASIC LAW (LAW NO. 132, 1967), AND THE FEES ARE TO BE COLLECTED AS CHARGES FOR THE USE OF AIRPORTS, ACCORDING TO THE STANDARDS SET FORTH IN THE NOTIFICATION, FOR EACH TIME A JET PLANE LANDS, FROM THE AIRLINE COMPANY, BY THE PERSON IN CHARGE OF THE ESTABLISHMENT AND MANAGEMENT OF THE AIRPORT.

4. AS IT IS CONSIDERED IMPOSSIBLE TO MAINTAIN THE FUNCTIONS OF AIRPORTS WITHOUT THE IMPLEMENTATION OF NOISE COUNTERMEASURES, IT IS JUDGED PROPER THAT THE EXPENSES NEEDED FOR SUCH COUNTERMEASURES SHOULD BE CONSIDERED AS A PART OF THE EXPENSES NEEDED FOR THE MAINTENANCE AND OPERATION OF AIRPORTS, AND THE USERS OF THE AIRPORT ARE ASKED TO SHOULDER THESE FEES, AS ONE FORM OF THE CHARGES FOR THE USING OF AIRPORTS, VS THE SAME WAY AS LANDING CHARGES, AND THESE FEES ARE NOT IN THE NATURE OF A SURCHARGE OR A FINE AGAGKST NOISES CREATED BY AIRCRAFT.

5. IT IS CONSIDERED PROPER THAT THE STANDARDS FOR THE SPECIAT LANDING FEES BE IN PROPORTION TO THE DEGREE OF NOISE CREATED BY AIRCRAFT, BUT AT THE SAME TIME, THERE IS NEED TO TAKE THE INCOME-EARNING CAPACITY OF THE AIRCRAFT CONCERNED INTO CONSIDERATION, AND THEY THEREFORE ALSO TAKE INTO CONSIDERATION THE MAXIMUM TAKE-OFF WEIGHT OF THE AIRCRAFT.

6. CONSEQUENTLY, EVEN IF THE CHARGES FOR WIDE-BODY AIRCRAFT BECOME HIGHER THAN THOSE FOR NARROW-BODY AIRCRAFT, THEY CERTAINLY DO NOT HAVE THE MEANING OF BEING IMPOSED AS A FINE. RATHER, WHEN THE CHARGES ARE SHIFTED TO THE COST PER SEAT, THE CHARGES ARE FIXED SO THAT THEY ARE FAR LOWER FOR THE WIDE-BODY LIMITED OFFICIAL USE

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AIRCRAFT.

7. THE NOISE COUNTERMEASURES EXPENSES FOR OSAKA AIRPORT FOR FISCAL 1975 ARE TO BE COVERED BY THE SPECIAL LANDING FEES INCOME OF THE SAID AIRPORT AND ALSO WITH FUNDS TRANSFERRED FROM THE STATE TREASURY. AS FOR THE NOISE COUNTERMEASURES EXPENSES FOR TOKYO AIRPORT, THE WHOLE AMOUNT IS TO BE TAKEN CARE OF BY

THE SAID AIRPORT'S INCOME FROM SPECIAL LANDING CHARGES.  
THERE IS ABSOLUTELY NO SUCH IDEA AS TO HAVE AVIATION  
ENTERPRISES USING TOKYO AIRPORT SHOULDER THE EXPENSES  
FOR NOISE COUNTERMEASURES OF OSAKA AIRPORT.

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ACTION EB-07

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R 030616Z SEP 75  
FM AMEMBASSY TOKYO  
TO SECSTATE WASHDC 2974  
INFO AMCONSUL MONTREAL  
AMEMBASSY LONDON  
AMEMBASSY PARIS

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8. AS REGARDS THE SPECIAL LANDING CHARGES NOW IN  
QUESTION, THE CHARGES OF THE SAME RATE FOR THE  
SAME TYPE OF PLANE ARE TO BE APPLIED, TO ALL AVIATION  
ENTERPRISES, REGARDLESS OF WHETHER THEY ARE INTER-  
NATIONAL LINES OR DOMESTIC LINES. THERE IS NO DIS-  
CRIMINATION AT ALL, AND IT IS CONSIDERED TO BE FAIR  
AND JUST. (AS REGARDS THE CHARGE RATES FOR INTERNATIONAL  
LINES, THE VIEWS OF THE INTERNATIONAL AIR TRANSPORT  
ASSOCIATION (IATA), ETC., WERE ALSO TAKEN INTO CON-  
SIDERATION, AND FOR FISCAL 1975 AND FISCAL 1976,  
THEY HAVE BEEN MADE LIGHTER THAN THE CHARGES FOR DOMESTIC  
LINES.)

9. IN THE LIGHT OF THE FOREGOING, THE JAPANESE GOVERNMENT  
THINKS THAT THE SAID SPECIAL LANDING CHARGES SYSTEM IS  
NOT CONTRARY TO ARTICLE 15 OF THE CHICAGO AGREEMENT  
OR A VIOLATION OF ARTICLE 6 OF THE JAPAN-UNITED  
STATES CIVIL AIR TRANSPORT AGREEMENT. FOR THIS REASON,

THEE MEASURE HAS ALREADY BEEN TAKEN TO NOTIFY INTERNATIONAL CIVIL AVIATION ORGANS THAT THIS SPECIAL LANDING CHARGE SYSTEM WILL BE PUT INTO EFFECT FROM SEPTEMBER 1. UNQTE.

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10. EMBASSY COMMENT: WE BELIEVE THAT GOJ'S FLAT STATEMENT (PARA 7) THAT AVIATION ENTERPRISES USING TOKYO AIRPORT WILL NOT HAVE TO SHOULD EXPENSES FOR NOISE ABATEMENT COSTS AT OSAKA, IF CORRECT, TAKES MUCH OF THE PUNCH OUT OF OUR PROTEST AND THE JOINT LEGAL ACTION PROPOSED BY CARRIERS. GOJ ARGUMENT COULD HOLD UP IN COURT, EVEN THOUGH MONEY IS FUNGIBLE AND MAINTENANCE OF SEPARATE ACCOUNTS FOR TOKYO AND OSAKA EXPENSES COULD BE A PURELY BOOKKEEPING MEASURE. FONOFF ALSO MAKES ARGUMENT (PARA 4) THAT EXPENSES FOR NOISE COUNTERMEASURES AT AIRPORTS SHOULD BE REGARDED AS NECESSARY FOR THE MAINTENANCE AND OPERATION OF SAME AND THAT THEREFORE NOISE CHARGES ARE ANOTHER TYPE OF AIRPORT USER CHARGE WHICH THE MOT HAS THE AUTHORITY TO LEVY. THIS POINT APPEARS TO UNDERMINE THE SECOND LEG OF THE LEGAL CASE; I.E., THAT THE MOT HAS GONE BEYOND ITS LEGAL AUTHORITY IN LEVYING THE FEE.

11. PROVIDING THESE TWO PARAS (4 & 7) OF THE FONOFF NOTE ARE ACCEPTED AT FACE VALUE IT APPEARS THAT THE ONLY POINT WE COULD CONTINUE TO USE IN DISCUSSING THIS MATTER WITH THE GOJ, ASIDE FROM THE UNILATERAL NATURE OF THE ACTION, IS THE USE OF AIRCRAFT WEIGHT IN DETERMINING THE LEVY. THERE MAY ALSO BE OTHER POINTS WHICH DEPARTMENT CAN FURNISH. THE MOST EFFECTIVE POINT WE BELIEVE WE CAN MAKE IS THAT THE GOJ SHOULD AT LEAST WAIT FOR NOISE ABATEMENT ISSUES TO RECEIVE MULTILATERAL CONSIDERATION IN ICAO OR THE OECD WORKING COMMITTEE. REQUEST DEPARTMENT'S GUIDANCE IN LIGHT OF ABOVE AND TOKYO 12054, AS TO WHAT FURTHER STEPS, IF ANY, EMBASSY SHOULD TAKE IN THIS MATTER.  
HODGSON

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## Message Attributes

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